

SUBCHAPTER J. PROHIBITED TRADE PRACTICES
28 TAC §21.1007

INTRODUCTION. The Commissioner of Insurance adopts amendments to 28 TAC §21.1007, relating to restrictions on using underwriting guidelines based on a water damage claim, previous mold damage, or a mold damage claim. The amendments are adopted with nonsubstantive changes to the proposed text published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8554) and will be republished.

The amendments to §21.1007 implement Senate Bill 202, 84th Legislature, Regular Session (2015), which amended Occupations Code Chapter 1958 and transferred regulation of mold assessment and remediation from the Texas Department of State Health Services (DSHS) to the Texas Department of Licensing and Regulation (TDLR). One change adds the words "Insurance Code" before "\$551.107(e)" in §21.1007(d)(2). The other change appears in §21.1007(d)(5) by adding the word "the" before the word "certification" in the third sentence. The second change clarifies that the insurer's list of reasons must be about the particular consumer's certification, not just certifications in general. The remaining amendments are adopted without changes to the proposed text.

REASONED JUSTIFICATION. The amendments are necessary to show that regulation of mold assessment and remediation moved from DSHS to TDLR under SB 202. The amendments also make nonsubstantive changes for clarity and consistency with the Texas Department of Insurance's (TDI's) current writing style, and update statutory and administrative citations, TDI's web address, and other TDI information.

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Section 21.1007(b). Amendments to §21.1007(b) add the statutory definition of "appliance" under Insurance Code §544.352(a), to clarify the meaning of the term "appliance-related," in §21.1007.

The amended definition of "appliance-related claim" removes examples of specific appliances, because examples of appliances are included in the proposed definition of "appliance."

The amendments to §21.1007(b) also alphabetize the definitions and renumber each defined term based on that revised order.

Section 21.1007(d). Amendments to §21.1007(d) move the reference to an insurer's authorized inspectors from the first sentence of §21.1007(d)(5) to (d)(3)(E), so that (d)(3) includes a complete list of all individuals authorized to inspect and certify appliance-related water damage remediation.

Amendments to §21.1007(d) change references to "assessors" and "remediators" to "mold assessment consultants" and "mold remediation contractors" for consistency with the TDLR regulation addressing mold assessors and remediators in 16 TAC §78.150.

Amendments to §21.1007(d) adopt by reference the water damage repair certificate form (PC327 WDR1). The form provides the means to certify water damage remediation under Insurance Code Chapter 544, Subchapter H. Because the form is adopted by reference, substantive requirements on the form will not change except through a subsequent rule amendment process. Nonsubstantive information on the form, including TDI contact information, and formatting of the text are subject to change. People using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

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Amendments to §21.1007(d) make nonsubstantive editorial changes and reorganize the language in §21.1007(d)(4) and §21.1007(d)(5) to improve the rule's clarity and sequencing; update statutory citations; and update TDI's web address and outdated references to TDI's Automobile/Homeowners Section, which no longer exists under that name.

Section 21.1007(e). Amendments to §21.1007(e) include replacing references to "Texas Department of State Health Services" with references to "Texas Department of Licensing and Regulation" to conform with SB 202.

Amendments to §21.1007(e) adopt by reference the mold damage remediation certificate form (PC326 MDR1). The form provides the means to certify mold damage remediation under Occupations Code Chapter 1958 and Insurance Code Chapter 544, Subchapter G. The form also provides the means to certify that the property does not contain evidence of mold damage under Insurance Code Chapter 544, Subchapter H. Because the form is adopted by reference, substantive requirements on the form will not change except through a subsequent rule amendment process. Nonsubstantive information on the form, including TDI contact information, and formatting of the text are subject to change. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

Amendments to §21.1007(e) also update TDI's web address and an outdated reference to TDI's Automobile/Homeowners Section.

Section 21.1007(f). Amendments to §21.1007(f) include adding a reference to 28 TAC §5.9310(f), which already establishes requirements for submitting underwriting guidelines filings.

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Section 21.1007(g). Amendments to §21.1007 remove subsection (g). The subsection is unnecessary because it only addresses an effective date that has passed.

In addition to the changes already described, the amendments to §21.1007 include nonsubstantive editorial and formatting changes throughout the rule to conform it to TDI's current style and to improve the rule's clarity.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §21.1007 under Occupations Code §1958.154 and Insurance Code §§544.304, 544.354, and 36.001.

Occupations Code §1958.154 provides that the Commissioner of Insurance adopt rules describing the information required in the mold remediation certificate, and that the Commissioner design the certificate as necessary to comply with any requirements imposed under Insurance Code Chapter 544, Subchapter G.

Insurance Code §544.304 provides that the Commissioner adopt rules as necessary to implement Chapter 544, Subchapter G.

Insurance Code §544.354 provides that the Commissioner adopt rules to accomplish the purposes of Chapter 544, Subchapter H, including rules regarding the definition of a water damage claim.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement TDI's powers and duties under the Insurance Code and other laws of this state.

TEXT.

SUBCHAPTER J.

28 TAC §21.1007

§21.1007. Restrictions on Using Underwriting Guidelines Based on a Water Damage Claim, Previous Mold Damage, or a Mold Damage Claim.

(a) Purpose. The purpose of this section is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance due to previous mold damage, or by filing a mold damage claim, a water damage claim, or certain appliance-related claims under a residential property insurance policy.

(b) Definitions. The following words and terms, when used in this section, have the following meanings:

(1) Appliance--A household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.

(2) Appliance-related claim--A claim for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by Insurance Code §823.003 if that affiliate is authorized to write and is writing residential property insurance

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in Texas. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Insurance Code Chapter 981.

(5) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(6) Underwriting guideline--A rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or an agent of an insurer to decide to accept or reject an application for a residential property insurance policy or to determine how to classify risks that are accepted for the purpose of determining a rate.

(7) Water damage claim--A claim for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.

(c) Water damage claims – underwriting. An insurer may not use an underwriting guideline based solely on a single previous water damage claim either filed by the applicant or on the covered property. This subsection does not affect the surcharge and renewal provisions in Insurance Code §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice).

(d) This subsection contains provisions related to underwriting and rating based on a previous appliance-related claim.

(1) Except as provided in Insurance Code §544.353(e) (concerning Restrictions on Use of Claims History for Water Damage) an insurer must not use a previous appliance-related claim as a basis for determining a rate to be paid or for determining whether to issue, renew, or cancel a residential property insurance policy if the consumer complies with the requirements in Insurance Code §544.353(c) and

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§544.353(d). It is the consumer's option whether to have the appliance-related claim inspected and certified. The consumer is responsible for the cost of the inspection and certification. An appliance-related claim that is not inspected and certified is subject to subsection (c) of this section.

(2) Nothing in this subsection exempts an insurer from the notice provisions in Insurance Code §551.107(e). However, appliance-related losses are a special class of non-weather-related losses. The notice must be specific to the insured's appliance-related loss history.

(3) The following individuals are inspectors that may have the knowledge and experience in water damage remediation to inspect and certify the proper remediation of an appliance-related claim:

(A) inspectors licensed or certified through the Voluntary Inspection Program under Insurance Code Chapter 2003, Subchapter C;

(B) persons licensed to perform real estate property inspections under the Real Estate Licensing Act;

(C) persons licensed as mold assessment consultants or mold remediation contractors by the Department of Licensing and Regulation under Occupations Code Chapter 1958;

(D) engineers licensed by the Texas Board of Professional Engineers;
and

(E) persons authorized by an insurer to perform appliance-related water damage remediation inspections.

(4) An insurer that maintains a list of authorized inspectors must give verbal and written notice that a claimant has the right to choose an inspector. The inspector does not have to be on the insurer's list. The insurer must give verbal notice when the claimant

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calls to report the claim. The insurer must send written notice within 15 days after the insurer receives notice of the claim.

(5) If a consumer uses an inspector from an insurer's list, the insurer may not reject or challenge the certification. If the consumer uses an inspector who is not on the insurer's list, the insurer may reject or challenge the certification by reinspecting the property. The insurer must give the consumer a list of all reasons it will not accept the certification. The insurer must keep all documentation of the reinspection.

(6) If an inspector physically inspects the property and determines that the appliance-related water damage was properly remediated, the inspector must issue a water damage repair certificate (PC327 WDR-1) within 10 days of completing the inspection.

(7) Water damage repair certificate form (PC327 WDR-1). An inspector must use the water damage repair certificate form (PC327 WDR-1) found on TDI's website at www.tdi.texas.gov, or by requesting the form from the Property and Casualty Lines Office, MC 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104. TDI adopts by reference the water damage repair certificate form (PC327 WDR1) that an inspector must use, subject to the provisions of this subchapter and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(8) TDI has information about inspectors who may have the knowledge and experience in water damage remediation to inspect and certify the proper remediation of an appliance-related claim. A list of inspectors can be obtained from TDI's website or by requesting it from the TDI Property and Casualty Lines Office.

(e) This subsection contains provisions related to underwriting based on previous mold damage or a previous mold damage claim.

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(1) An insurer may not use an underwriting guideline based on previous mold damage or a previous mold damage claim filed by the applicant or on the covered property if:

(A) the property is eligible for residential property insurance coverage;

(B) the property had mold damage;

(C) mold remediation was performed on the property; and

(D) the property was:

(i) remediated in accordance with the requirements in Occupations Code Chapter 1958, Subchapter D and any applicable rules adopted by the Department of Licensing and Regulation, and inspected by a licensed mold assessment consultant; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying with reasonable certainty that the underlying cause or causes of the mold at the property were remediated; or

(ii) inspected by a licensed, independent mold assessment consultant or a licensed adjuster; and a mold damage remediation certificate (PC326 MDR-1) was issued to the property owner under Occupations Code §1958.154, certifying that, based on the mold assessment inspection, the property does not contain evidence of mold damage.

(2) Mold damage remediation certificate form (PC326 MDR-1). Mold remediation contractors, mold assessment consultants, and adjusters must use the mold damage remediation certificate form (PC326 MDR-1) found on TDI's website at www.tdi.texas.gov or by requesting the form from the TDI Property and Casualty Lines Office, or from the Department of Licensing and Regulation. TDI adopts by reference the mold damage remediation certificate form (PC326 MDR1) that must be used, subject to

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the provisions of this subchapter, Occupations Code Chapter 1958, and Insurance Code Chapter 544. Persons using the form should confirm that they are using the most recent online version before giving a copy to the property owner.

(3) This subsection does not affect the surcharge and renewal provisions in Insurance Code §551.107 (concerning Renewal of Certain Policies; Premium Surcharge Authorized; Notice).

(f) This subsection contains provisions for filing underwriting guidelines related to water damage claims, previous mold damage, or mold damage claims.

(1) All underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must be filed with TDI. They must comply with the requirements in this section and with any rules adopted by the Commissioner.

(2) Underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims must be submitted to TDI as described in §5.9310(f) of this title relating to Property and Casualty Transmittal Information and General Filing Requirements.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on April 17, 2019.

/s/ Norma Garcia

Norma Garcia
General Counsel
Texas Department of Insurance

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The Commissioner adopts amendments to 28 TAC §21.1007, relating to restrictions on using underwriting guidelines based on a water damage claim, previous mold damage, or a mold damage claim.

/s/ Kent C. Sullivan _____

Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. **2019-5941**